P 43/6

THE TITLE 38 PERSONNEL SYSTEM IN THE DEPARTMENT OF VETERANS AFFAIRS:

AN ALTERNATE APPROACH

A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board

A SPECIAL STUDY

MS 1.2:

READEX FICHE best copy available

THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

April 1991

Sirs:

In accordance with the Civil Service Reform Act of 1978, it is my honor to submit the U.S. Merit Systems Protection Board report titled "The Title 38 Personnel System in the Department of Veterans Affairs."

This report reviews an alternate Federal personnel system authorized by title 38 of the United States Code. The system covers 75,000 employees in 12 health care occupations at the Department of Veterans Affairs (VA).

The report describes the major features of the title 38 personnel system and contrasts them with those of the competitive civil service system covered by title 5 of the United States Code. The report includes the opinions of VA managers in the field who deal with both the title 38 and title 5 personnel systems. The Board identifies features of the title 38 system which have potential applicability in the title 5 competitive service.

I think you will find this report useful as you consider issues affecting the ability of the Federal Government to achieve its human resource goals and maintain high standards of integrity.

Respectfully,

Daniel R. Levinson

Daniel R. Levinson

The President
The President of the Senate
The Speaker of the House of Representatives
Washington, DC

The Bicentennial of the U.S. Constitution 1787-1987

U.S. MERIT SYSTEMS PROTECTION BOARD

DANIEL R. LEVINSON, CHAIRMAN

ANTONIO C. AMADOR, VICE CHAIRMAN

JESSICA L. PARKS, MEMBER

Lucretia F. Myers, Executive Director

Office of Policy and Evaluation

Evangeline W. Swift, Director

John M.Palguta, Deputy Director

Bruce Mayor, Project Supervisor

Keith Bell, Project Manager

TABLE OF CONTENTS

Executive Summary 1

Introduction 5

Title 38 Structure 7

Methodology of the Study 9

Administration of Title 38 11

Title 38 and Medical School Affiliation 13

Use of Rank in Person in the Title 38 System 17

Recruitment and Placement in the Title 38 System 23

Pay Administration 31

Effectiveness and Efficiency of Title 38 37

Title 38 Appeals System 41

Conclusions 45

Recommendations 47

Appendix 49

EXECUTIVE SUMMARY

The substantial majority of the more than 2 million employees of the executive branch of the Federal Government are employed under a common set of personnel laws contained in title 5 of the United States Code. To a degree unprecedented in their history, these laws and the voluminous rules and regulations which flow from them are accused of being outdated or inadequate to the human resource challenges facing the Government today. However, in a few Federal agencies, some or all of their employees are employed under a completely different set of personnel laws, rules, and regulations. While the historical reasons for establishing these alternate personnel systems vary, each system offers an opportunity to examine how its alternate rules and methods meet the human resources needs of its agency and whether adoption of these rules and methods in the title 5 system would be desirable. Accordingly, this report examines the operation of a personnel system covering approximately 75,000 health care workers in the Veterans Health Services and Research Administration of the Department of Veterans Affairs. This latter system is referred to in this report as the "title 38" system after the title in the United States Code where its legal basis is found.

The title 38 system was created in 1946 to facilitate the rapid staffing of veterans hospitals to treat the many casualties from World War II. Originally covering only physicians, dentists, and nurses, the system has gradually expanded to cover a total of 12 different occupations in Department of Veterans Affairs (VA) medical centers. Just as veterans health care faced enormous challenges brought on by the post-war human resources environment in the late 1940's, so the entire Federal Government faces enormous challenges from the changing nature of the work force and the environment as we approach the year 2000.

The approximately 75,000 employees covered by the title 38 personnel system work side by side with more than 135,000 other VA employees covered by the title 5 system. This Merit Systems Protection Board (MSPB) study describes some of the major differences between the two systems.

The review identified several provisions of the title 38 system which merit consideration for adoption in any attempts to modify the larger title 5 system to better meet the challenges of a new millennium. While these elements may not be viable in their entirety outside the environment of VA, they should at least serve as "food for thought" regarding the future evolution of the title 5 system. The study also found at least one aspect of the title 38 system which itself appears in need of some rethinking.

Among the major finding of this review are the following:

- Unlike the title 5 personnel system which relies heavily on the judgments of staff in the agency personnel offices, the title 38 system uses standards boards consisting of peers and other health care professionals to evaluate the qualifications of all covered employees. These board evaluations are a

central mechanism in assigning grades to each individual hired or advanced in the title 38 system. The standards boards also make key pay determinations for each individual within the grade assigned to each employee.

- The title 38 system requires no formalized competition for hiring or advancement as does the title 5 system. MSPB field visits to various VA installations confirm that the absence of formalized competition speeds personnel hiring and internal placement. The focus of title 38 hiring and placement decisions, however, is on the quality of the individuals as measured by their relative skills and knowledges. The standards boards assist in maintaining that focus.

- The title 38 system uses a modified rank-in-person system in which standards boards assign a grade to each employee rather than to the position held. This is in contrast to the title 5 system, in which a position is graded, and each employee holds the grade of the position occupied.

- Compared to the title 5 pay setting rules and regulations, the title 38 system provides greater flexibility in setting the actual pay level within the grade assigned to each employee.

- While the greater pay flexibilities of title 38 have allowed VA to compete more effectively in shortage category occupations by paying a higher salary than would otherwise be possible, title 38 pay rates have reached statutory limits in urban areas, and VA is becoming less competitive in these areas.

- VA managers at the installations visited appear to have little difficulty operating the title 38 personnel system in tandem with the title 5 system, even though approximately 40 percent of all VA medical center employees are covered by the former and 60 percent by the latter.

- Overall, the title 38 personnel system allows VA managers greater control over personnel decisions than does the title 5 system. VA's operating instructions for the title 38 system correspondingly delegate greater human resource management responsibility to the local managers.

- The managers interviewed as part of this study clearly regard the title 38 personnel system as more effective than the title 5 system and, in their view, more equitable to the employees, especially in the areas of qualifications and pay determinations.

- One aspect of the title 38 system which VA managers viewed as less effective than the title 5 system was the disciplinary and appeals provisions. Title 38 requires that an elaborate disciplinary board process be undertaken before even a minor disciplinary action can be imposed. However, pending legislation would reduce the complexity of the system and address some of the managers' concerns.

Based on the findings of this review, consideration should be given to the possible adaptation of some of the title 38 concepts and procedures into the title 5 system. Likewise, strong consideration should be given to exercising the

option provided in recent legislation to apply title 38 grade and pay provisions to title 5 health occupations. Chief among the Board's recommendations would be that Federal policy makers do the following:

1. Consider the use of standards boards or a similar peer review process in the grade and pay setting process in title 5. Such a move, of course, would require a greater degree of flexibility in the current title 5 rules and regulations. This might include a modified rank-in-person system for grade-setting purposes. As a major step in this direction, we note that recently passed title 5 pay reform legislation (Public Law 101-509) allows the Office of Personnel Management the discretion to use title 38 pay and grade-setting provisions for some health care occupations currently covered under title 5 in other agencies.

2. Consider an increase in the delegation and decentralization of title 5 personnel management authorities to Federal managers. Under a title 38 approach, this would involve changing some of the current title 5 related procedural requirements, especially those which would transfer some current decision making authority from personnel office staffs to line managers. A number of specific title 38 authorities which meet this criterion are discussed in the body of this report.

3. Consider reducing the administrative restrictions on the hiring of noncitizens to assist agencies in filling positions requiring specialized skills and for which there is an insufficient number of qualified citizens available. Currently, under title 38, VA central office may waive the requirement for an entire occupation at a specific medical center. Under title 5, OPM must grant a waiver for each individual hire. Given the current chronic shortage of certain skills in the work force and the demographic projections showing that noncitizens will constitute an even greater percentage of the available labor pool in the future, more efficient title 5 procedures seem warranted.

INTRODUCTION

This is the second U.S. Merit Systems Protection Board (MSPB) study of an alternate personnel system. The first study focused on the Tennessee Valley Authority, with the results published in 1989.[1] The Department of Veterans Affairs attracted us for this second study of an alternate personnel system by the large population covered and the unusual features of its alternate system.

The original impetus for the creation of an alternate personnel system for veterans health care was the circumstances the country faced at the end of World War II. In 1945, the war was coming to a close, and the country faced the demobilization of over 14 million people in the uniformed services. Medical care of those veterans disabled by the war fell to the Veterans' Administration (the VA), generating an urgent need to expand the VA hospitals. The effort was considered so important that one of the great leaders in the war, General Omar Bradley, was recruited to head the VA.

The VA was faced with the need for a massive increase in its work force. At the same time, physicians and nurses released from the uniformed services were seeking immediate placement in civilian jobs. The urgent need to recruit physicians, dentists, and nurses at that time, combined with the slowness of the Civil Service Commission in providing candidates through its examination process, was addressed by legislation which created a separate personnel system for these occupations in the VA. A key provision of this legislation exempted the occupations from competitive examining requirements to expedite hiring and to allow the VA flexibility to affiliate with the Nation's medical schools in order to tap their expertise. The legislation was opposed by the Civil Service Commissioners, who asked the President to veto it. General Bradley had to be called back from the first vacation he had taken since the beginning of the war to argue for the legislation in the President's office.[2] In the end, the President signed the legislation into law in January 1946, and the VA got its own personnel system.

This personnel system is usually called the "title 38" personnel system after the title of the United States Code where its legal basis is codified. As indicated above, from its beginning the title 38 system has been a departure from the competitive civil service system (often called the "title 5 system"). Although the occupational coverage of title 38 has been expanded three times since the original legislation and the system has been subject to other modifications, it remains separate from title 5.

The Veterans' Administration also maintained its independence as an agency. It became a Cabinet-level department designated as the Department of Veterans Affairs (but retaining its old "VA" initials) in 1989. The Department's

[1] U.S. Merit Systems Protection Board, "The Tennessee Valley Authority and the Merit Principles," Washington, DC, August 1989.

[2] For a description of the actual debate, see: Paul B. Magnuson, M.D., "Ring the Night Bell," University of Alabama at Birmingham, Birmingham, AL, 1986, pp. 289-298.

Veterans Health Services and Research Administration (VHSRA) now operates a total of 172 medical centers throughout the Nation employing approximately 212,000 people. Approximately 75,000 of these employees are in the title 38 system. Most of the remaining 137,000 employees are covered by the title 5 system.

In VA's medical centers, individuals covered by the title 38 system work side by side with those covered by the title 5 system. In some cases, employees covered by the two personnel systems work for the same supervisor.

TITLE 38 STRUCTURE

Summary: *VA's alternate personnel system covers 12 occupations and 75,000 employees. The system started in 1946 with three occupations with others added periodically. The five occupations added to the system after 1975 are covered by title 5 performance management, leave, and discipline provisions.*

The parameters of the title 38 system are unusual. The system covers only those employees in 12 occupations within the Veterans Health Services and Research Administration.

These represent the three original occupations in the title 38 system (physician, dentist, and registered nurse) and nine additional occupations placed in the system by congressional action at later dates. These additions give the system an ad hoc quality without categorical consistency. While 12 occupations are covered by title 38, a number of other significant health care occupations such as clinical psychologist, medical technologist, and dietitian are not. Further, the law provides different personnel rules for different occupations within title 38.

Employees in the original three occupations—physician, dentist, and registered nurse—and in the four occupations brought into the system next, in 1975—expanded-function dental auxiliary, optometrist, physician assistant, and podiatrist—are paid under specific title 38 pay schedules and are covered by rules separate from those of title 5 for placement, pay administration, leave, hours of duty, discipline, adverse actions and appeals, and performance management. These employees are covered only by the title 5 retirement rules.

The remaining occupations—practical nurse, occupational therapist, pharmacist, physical therapist, and respiratory therapist—were brought into the title 38 system after 1975 and were placed under title 38 under a different combination of rules. These occupations are usually called "hybrids." While sharing placement and pay administration provisions with other title 38 occupations, these hybrid occupations remain covered by some of the provisions of the title 5 personnel system. Specifically, these occupations are paid under the General Schedule rather than a separate pay scale; are subject to the disciplinary and adverse action procedures of title 5 and may appeal any adverse action to MSPB; and are also covered by the title 5 performance management and leave systems.

The 12 occupations and their coverage by various provisions of the law break down as follows:

TITLE 38 OCCUPATIONS COVERED BY SEPARATE PERSONNEL PROVISIONS FOR ALL BUT RETIREMENT

- Dentist
- Expanded-Function Dental Auxiliary
- Optometrist
- Physician
- Physician Assistant
- Podiatrist
- Registered Nurse (including Nurse-Anesthetist)[3]

TITLE 38 OCCUPATIONS COVERED BY TITLE5 PERSONNEL SYSTEM PROVISIONS EXCEPT RECRUITMENT, PLACEMENT, AND PAY ADMINISTRATION

- Occupational Therapist
- Pharmacist
- Physical Therapist
- Practical Nurse[4]
- Respiratory Therapist and Technician

[3] While nurse-anesthetist is included in the registered nurse occupation, VA distinguishes between the two titles administratively. Nurse-anesthetists, unlike most other registered nurses, are directly supervised by physicians. They have separate qualifications standards, and appointment and pay matters are handled by a board of physicians rather than registered nurses.

[4] The occupational title "practical nurse" is used throughout this report. Actual titling practice varies from State to State. Most States use "licensed practical nurse" (LPN). California and Texas use "licensed vocational nurse" (LVN).

METHODOLOGY OF THE STUDY

In addition to looking at the legal and administrative structure of the title 38 personnel system, we wanted to see how the system actually functions at the operational level. To accomplish this, we visited individual medical centers to gather data on how actual operations are conducted. To limit the scope of these visits to a manageable level, we focused on urban areas where the Federal Government is generally recognized to be in a difficult competitive position in attracting and retaining employees.

We chose to study three occupations during our site visits: physician, registered nurse, and practical nurse. These occupations were selected because they represent approximately 80 percent of the employees in the title 38 system. Further, the registered nurses and practical nurses in VA medical centers serve under the same supervisors, and these two occupations have among the highest turnover of all occupations within the Federal Government.[5]

We visited eight VA medical centers. Seven are in urban areas—two each in Los Angeles, New York City, and San Francisco, plus the center in Washington, DC. The eighth center visited is the VA Medical Center, Perry Point, MD, which is located in a rural area. We selected this center to contrast it to the urban centers. In fact, we found almost no difference in the practices at Perry Point, and the problems of recruitment and pay were the same kind as those facing the medical centers in urban areas.

Our onsite interviews involved a specific interview agenda and open-ended discussions with key management officials. Those interviewed have key roles in the administration of the title 38 personnel system. The appendix discusses the organizational roles of these individuals in detail.

[5] U.S. Merit Systems Protection Board, "Who Is Leaving the Federal Government? An Analysis of Employee Turnover," Washington, DC, August 1989, p. 33.

ADMINISTRATION OF TITLE 38

Summary: *The title 38 personnel system operates under far fewer legal provisions, regulations, and instructions than does the regular civil service. The fewer rules in title 38, combined with line managers' more direct involvement in administering the system, facilitate VA's affiliation program with the Nation's medical schools.*

The legal provisions for the title 38 personnel system are brief. A single chapter of the 33 chapters of title 38 of the United States Code contains the entire legal basis for the system. In contrast, the personnel provisions for the regular civil service require their own title—title 5—in the United States Code. This title contains a total of 40 chapters.

The title 38 system is administered using rules promulgated through VA's Manual MP-5, Part II. This manual fills a single 2-inch ring binder. Since few of the personnel provisions in title 38 of the law are reduced to formal codified Federal regulations, most of the provisions of Manual MP-5, Part II, are direct interpretations of the law into operating instructions. Although the provisions of Manual MP-5, Part II, are not themselves regulations, VA has taken the position that its manual instructions have the force of regulation within the Department.

The direct way in which the operating instructions for the title 38 system are generated contrasts with the method used under title 5. Under title 5, the U.S. Office of Personnel Management (OPM) must formally publish, through a lengthy process dictated by the Administrative Procedures Act, regulations which interpret and implement the provisions of the law. These regulations are then codified as 5 CFR (Code of Federal Regulations), which now contains over 1,200 pages. OPM then gives further explanations and guidance on these regulations through its Federal Personnel Manual (FPM), which contains over 6,000 pages. The FPM is then interpreted in larger Federal agencies by a manual which gives agency procedures and operating instructions on the FPM and the CFR.

VA's ability to bypass the elaborate processes characteristic of title 5 in administering its title 38 personnel system clearly shortens the process of promulgating operating rules and guidance. This ability combined with the much shorter title 38 manual points to a far less complex, more flexible structure.

In addition to having a less complex structure of law, regulation, and guidance, the title 38 system is structured to allow for greater control over personnel decisions by local line officials. This local control assists VA officials in competing with other employers in the community and facilitates VA medical centers' principal strategy for maintaining a high quality of clinical care—affiliations with schools of medicine. How title 38 rules assist in recruiting and placement is discussed in a later section. The nature of VA's affiliations with schools of medicine and how title 38 personnel rules facilitate these affiliations are discussed in the following section.

TITLE 38 AND MEDICAL SCHOOL AFFILIATION

Summary: *Participation in the teaching programs of the Nation's schools of medicine has been VA's principal strategy for obtaining advanced knowledges and skills in the practice of medicine. Teaching arrangements often extend to VA sharing facilities and services with the medical schools. The title 38 personnel system is a major link in facilitating VA participation in the teaching programs through the appointment of residents and faculty members in VA medical centers.*

At the end of World War II, the VA was struggling with a problem beyond one of meeting workload. That problem was ensuring high-quality care in its health services. The strategy which was devised for dealing with the concern was to tap the resources of the Nation's schools of medicine. This was accomplished by the VA's "affiliation" program—a program which is still central to the functioning of VA medical centers.

Under this program, each affiliated VA medical center puts itself under the governance of a "Dean's Committee" which is chaired by the dean of the affiliated medical school and which oversees the patient treatment program—and more specifically, the appointment of physicians to the VA medical center. Further, the VA medical center is integrated into the postgraduate (resident) training program of the medical school, with resident physicians rotating to VA for training and VA staff physicians holding faculty appointments with the affiliated medical school. The creation of the title 38 personnel system with its recruiting and placement flexibilities has been essential to the success of the affiliation program.

In his autobiography, Paul B. Magnuson, M.D., one of the architects of the affiliation system, and later the Chief Medical Director of the Veterans' Administration, describes his discussions with General Omar Bradley on the necessity of a personnel system outside the regular civil service to accomplish these affiliations. Dr. Magnuson's opinion was that high-quality medical care required affiliations with medical schools and that affiliations could be maintained only "* * *if a qualified doctor applies for a job in a Veterans' Administration hospital one morning, he can be at work in that hospital by six o'clock that same evening."[6] Thus, the beginning of VA's affiliation program and the creation of the title 38 personnel system go hand in hand.

---

[6] Paul B. Magnuson, M.D., "Ring the Night Bell," University of Alabama at Birmingham, Birmingham, AL, 1986, p. 281.

The term "affiliation" usually refers to VA medical centers' participation in the teaching programs of schools of medicine. While VA medical centers may also be affiliated with other schools for the training of students in allied health occupations, it is affiliations with schools of medicine which are the focus of VA's affiliation program.

At a minimum, medical affiliation indicates that VA is used as a site for the postgraduate training of physicians—called residency programs. This is often expanded to include the rotation of "clinical clerks"—third and fourth year medical students—to VA for training.

The medical affiliation relationship, while guided by formal VA policy statements, is defined by the dynamics of the individual medical school and the local VA medical center. In some cases, VA is closely tied to and integrated with the programs of the affiliated medical school. In other cases, the relationship is quite loose, with the VA medical center having limited participation with the medical school.

In many close affiliations, the medical center is physicaly located on the campus of the affiliated school or has been built on school-owned lands in the vicinity of the campus. In some cases, such as the VA Medical Center, Madison, WI, or the VA Medical Center, Columbia, MO, they are even physically connected to the affiliated medical shools' teaching and clinical facilities. The most striking example of closeness occurs in Birmingham, AL, where a wing of the VA building is built on air rights over a street and abuts the medical school complex on the opposite side of the street. Thus, one goes from the VA medical center to its affiliated medical school by walking through a door.

The affiliations often form the basis for additional cooperative efforts between VA medical centers and their affiliated medical schools. These include various arrangements for joint research projects and shared facilities and services. For example, diagnostic capabilities such as magnetic resonance imaging are often shared, and in some locations, the VA medical center and its affiliated medical school share specialized surgical units for such procedures as open-heart surgery and organ transplant.

At the VA medical centers we visited, the detailed arrangements for the medical affiliation varied widely. In some cases, the VA medical center employs full-time physicians who hold clinical appointments at the affiliated school. In other cases, physicians are part-time at VA with the remainder of their time going to a faculty appointment at the affiliated institution.

VA medical centers' arrangements with their affiliated medical schools for resident physicians also vary widely. In one case—Perry Point, MD—there were only a few residents who rotated to that medical center as part of the affiliation between the University of Maryland and the VA Medical Center, Baltimore. In another—Washington, DC—residency programs in different specialties were affiliated with three different medical schools. In still another—Martinez, CA—most of the residencies were carried out in affiliation with the University of California at Davis, but the medical center continued to operate its own independent residency in internal medicine.

VA continues to see the many threads which bind it with the Nation's medical schools as its principal means of obtaining advanced knowledges and skills in the practice of medicine. The strongest links are the teaching programs carried out with residents and attending physicians who are part of medical school teaching programs.

The hiring of resident physicians and attending regular VA physicians, which is central to the medical school affiliations, is effected through the title 38 personnel system. The absence of the traditional civil service examination process, with its many rules for rating and ranking, allows VA to hire those physicians acceptable to both the individual VA medical center and its affiliated school of medicine as residents and faculty members based on their mutual needs, rather than on meeting regulatory requirements set by an outside agency (i.e., OPM). Without this freedom from the traditional civil service rules of the title 5 personnel system, VA could not so easily appoint and terminate residents, nor could VA appoint physicians based on their faculty status at the affiliated medical schools. Without this ease in making appointments, it is doubtful that VA could maintain the individually tailored personnel arrangements with the medical schools which are essential to affiliation arrangements. And without these arrangements VA's health care program would certainly suffer.

USE OF RANK IN PERSON IN THE TITLE 38 SYSTEM

Summary: *In the title 38 system, grades are assigned directly to people based on their individual qualifications (rank-in-person method of grade setting) as opposed to assigning people the grades of the positions which they occupy (rank-in-position method). The title 38 system uses "standards boards" of knowledgeable professionals to establish the grade of each person upon appointment and to consider promotion later—a system very attractive to VA managers. The concepts and procedures used in title 38 could have applicability to other occupations and agencies within the Government.*

- **Definition**

The title 38 personnel system is said to use a "rank-in-person" methodology for setting grade and pay, as opposed to the "rank-in-position" methodology typically used in the title 5 system. While this is theoretically so, at a practical level VA imposes limitations on its rank-in-person system. The differences in the title 5 and title 38 grading systems are illustrated below.

In the title 5 system almost all positions are subject to the process of classification or job grading. In this process, a formal description of duties and responsibilities is written for each position (but not each employee). An occupational title and a grade within an established pay schedule are established by analysis—usually by a personnel office employee whose training is not in the occupation being analyzed—of the formal description against a published standard. The published standard defines the occupational line of work and assigns value to such items as responsibility, knowledge required, and physical effort involved. Each position is titled and graded regardless of incumbents' qualifications, and incumbents assigned to that position are assigned the grade of that position.

In contrast to the title 5 methodology of grading positions, title 38 uses a methodology in which the qualifications of each person are evaluated against agency-established qualification standards, and a grade (rank) is assigned to the person based on his or her individual qualifications regardless of the position held. Title 38 also contrasts with title 5 in who performs the evaluation. To evaluate the grade to be assigned to a person, title 38 uses groups of employees in the same or related occupations as the person being evaluated rather than employees in the personnel office. The evaluating groups in title 38 are called "standards boards." The rules for applying rank to each person and the procedures of the standards boards are discussed below.

- **Applying the Rank-in-Person Concept**

While in theory the title 38 system should rank a person regardless of position held, in practice, the position held by an individual either influences or dictates the grade held. In typical positions, the opportunity to demonstrate the qualifications which would justify promotion is often determined by the nature of those positions. For example, assuming that a registered nurse has no prior leadership experience in the profession prior to VA, he or she can demonstrate leadership

skills if assigned to a supervisory position, but it would be difficult to demonstrate these skills if assigned to a nonsupervisory position. Thus, in such cases the position in which a person works influences the level to which he or she may be promoted.

The link between position held and individual rank is even more direct in higher grades of the physician and registered nurse pay schedules. At these levels, VA's rules mandate promotions based entirely on position held. Promoting on this basis is done by restricting these higher grades to persons assigned to key positions. For example, VA's Manual MP-5, Part II, restricts the highest three grades of the registered nurse pay schedule to "selected leadership positions"[7] such as Chief, Nursing Service. In fact, Chiefs, Nursing Service, at VA medical centers are graded based on the complexity level of the medical center, and VA manual guidance provides for changing individuals to a lower grade if they are reassigned to a less complex medical center.[8]

Practical nurse grades are also restricted by assignment or local practice. Practical nurses are typically promoted up to the GS-5 level as a matter of normal career progression. However, to meet the qualifications for promotion to the GS-6 level, practical nurses must have taken on responsibilities which are not associated with all positions. Thus, many assignments are not considered qualifying for this highest grade for the occupation. Further, we found local practice may act as an additional barrier. In one medical center we visited, the practical nurses are not promoted to the GS-6 level even after an official board finding that they are qualified for this grade unless one of a limited number of designated positions is vacant.

Our site visits revealed that all physicians in an affiliated setting are inevitably at the "Chief" grade of the physician schedule, so that there is a limited range in basic pay among physicians. The two higher physician grades—"Executive" and "Director"—are restricted by VA policy to Chief of Staff or higher positions.[9]

As one can see from this, VA does not have a pure rank-in-person system. The position held often influences the ability of an incumbent of that position to qualify for a higher grade. Further, the highest three registered nurse grades and the highest two grades for physicians are assigned exclusively on the basis of the position held.

While the title 38 arrangements are different from title 5's in approach and in detailed methods, they are remarkably the same in outcomes. In either system, one meets the basic qualifications for an occupation and is then given career promotions to a certain grade level. After that point, promotions are based on one's opportunity to fill certain designated positions.

- **Standards Boards**

The use of standards boards is unique to the title 38 personnel system. Each VA medical center has a standards board for physicians, for registered nurses, and for practical nurses. In addition, a number of designated VA medical centers have boards for each of the other title 38 occupations. Since these other occupations have fewer employees in them, one board typically serves several medical centers.

[7] VA Manual MP-5, Part II, ch. 2, sec. C.

[8] Ibid., ch. 3, sec. A, app. C.

[9] Ibid., ch. 2, sec. C.

Standards boards typically do not meet as a whole, but rather a panel of three to five people drawn from the board meets to consider individual actions as needed. Composition of the panels for each occupation in title 38 is prescribed by Manual MP-5, Part II, as follows:

- **Physicians**: solely physicians.
- **Registered Nurses:** solely registered nurses.
- **Dentists**: solely dentists.
- **Nurse-Anesthetists**: primarily physicians, but one or two nurse-anesthetists may be included.
- **Physician Assistants**: primarily physicians, but one or two physician assistants may be included.
- **Expanded-Function Dental Auxiliaries (EFDA's)**: primarily dentists, but one or two EFDA's may be included.
- **Podiatrists**: one physician and two podiatrists.
- **Optometrists**: one physician and two optometrists.
- **Respiratory Therapists and Technicians**: three physicians, or two physicians and one respiratory therapist.
- **Physical Therapists**: either two physical therapists and one physician or two physicians and one physical therapist.
- **Occupational Therapists**: two occupational therapists and one physician or two physicians and one occupational therapist.
- **Pharmacists**: solely pharmacists.
- **Practical Nurses**: two registered nurses and one practical nurse.

Standards boards are often called a "peer review" system. However, as can be seen from the prescribed composition of the board panels, only physicians, dentists, registered nurses (except nurse-anesthetists), and pharmacists are reviewed solely by their own professional peers. VA policy further dictates that a physician chair panels on which physicians serve. These board requirements reflect the hierarchy of health care occupations, with the physician at the top.

The board for each occupation has a major role in setting the basic pay of each individual in that occupation. The board evaluates the basic qualifications of each person being hired and recommends the grade and pay step of that individual. It periodically considers the qualifications of each employee in the occupation to determine whether to promote that individual, and it considers incentive awards involving pay adjustments.

As part of our onsite interviews, we interviewed the chairs of the physician, registered nurse, and practical nurse boards, and we discussed the operation of the registered nurse and practical nurse boards with the other nursing officials we interviewed.

These interviews and a review of the rules covering the boards revealed that VA exerts strong management control over the boards. VA requires that the physician professional standards board be chaired by the Chief of Staff,[10] who is the chief clinical officer in each medical center to whom all physicians report. At all of the sites we visited, the members of the physician board were chiefs of clinical services. This was apparently to meet an additional VA requirement that at least two members of the physician board be "senior chiefs of service."[11] In other words, this board is made up entirely of key management officials.

As further evidence of management control over the boards, we found that the Chiefs, Nursing Service, effectively make the decision as to membership on the registered nurse and practical nurse boards. At all of the medical centers we visited, we asked the Chiefs, Nursing Service, who determines the membership of the boards. In all cases, the Chiefs, Nursing Service, felt that they effectively do, although their nominations must be approved by the Medical Center Director. At all of the medical centers we visited, we asked if the Director had ever objected to the membership nominated. In all cases we were told that the Director had never objected to a nomination by the Chief, Nursing Service, thus confirming the essential control by the Chief.

None of the Chiefs, Nursing Service, we interviewed had a structured system with written criteria for selecting board members. Most often they said that they placed individuals on the boards for developmental purposes. Only one Chief, Nursing Service, had set a precise term of office for board members (2 years), while two other Chiefs had a policy of reviewing the membership—but not necessarily changing it—at specific intervals. The remaining five Chiefs said they reviewed the membership periodically, but at no fixed interval.

In all of the medical centers we visited, the membership of the registered nurse and practical nurse boards is quite large, varying between 12 and 24 members. However, the full boards rarely, if ever, meet. Since in the medical centers, the number of registered nurses and practical nurses presents the boards with many employees' qualifications to review, frequent meetings (often weekly) are necessary. To accommodate this schedule, panels of three to five people are drawn from the larger board membership and are rotated to spread the workload.

At each medical center we visited, the chairs of the registered nurse and practical nurse boards are registered nurses who are key supervisory or management officials. As noted above, VA rules require that registered nurse standards boards be composed exclusively of registered nurses. For practical nurse boards, VA rules require the representation of at least one practical nurse on a panel. Our interviews with the chairs of the registered nurse and practical nurse boards revealed that while this latter requirement is being met, registered nurses make up the majority on every practical nurse panel.

Management control over the board process is reinforced by the approval process for board actions. Each board decision on a registered nurse or a practical nurse is in the form of a

[10] Ibid., ch. 2, 2.05 b(3).

[11] Ibid., ch. 2, 2.05 b(5).

recommendation which must be formally concurred in by the Chief, Nursing Service, and approved by the Medical Center Director. VA's formal rules allow the Chief, Nursing Service, to request the Medical Center Director to order a standards board to reconsider any action. In addition, if the Director disagrees with the local board's recommendation, she or he may forward the action for reconsideration by a standards board at another VA location designated by VA's central office.

Our interviews with Chiefs, Nursing Service, and with the chairs of the registered nurse and practical nurse boards revealed that at all eight sites visited, the Chiefs, Nursing Service, review every board action in detail before concurring. If they disagree, they normally discuss the matter with the chair of the board, and the board reconsiders the action without formal request by the Chief, Nursing Service, to the Medical Center Director. Chiefs, Nursing Service, and chairs of the boards point out that decisions upon reconsideration do not always change.

We asked the chairs of the registered nurse boards if they had ever been "overruled" by the Chief, Nursing Service, or had been coerced into a decision on a particular individual. All said that they had not. We also asked this of the chairs of the practical nurse boards, who also said that they had felt no coercion.

While those we interviewed did not report any coercive aspect to the board system, a striking amount of management control, nevertheless, is built into the system. By nominating key management officials to the boards and concurring on each action of the nursing boards, the Chief, Nursing Service, exercises significant control over the attitude of members toward the board process and the outcome in individual cases. Management control of the physicians board is ensured by the requirement that the board be made up of the Chief of Staff and his or her immediate subordinate line managers. Thus, management exercises significant control of the board process.

Clearly, this arrangement provides a means for line management to exercise judgments on rank and pay based on criteria well understood within a particular profession. This system avoids the elaborate standards system which characterizes the title 5 classification system and which places grading and pay decisions in the hands of staff members of the personnel office outside the management chain.

The first-line managers we interviewed liked the standards board system. They thought that grading based on individual qualifications reviewed by professionals is more equitable to employees than grading by classification of position held as in title 5. Several of those we interviewed suggested that the board system gives employees a perception of fairness in pay setting which gave VA an advantage over private sector employers.

We encountered two dissenting opinions among those interviewed in nursing as to the efficacy of the professional board process. Both these individuals thought that the inability of management to make a commitment to a final salary figure until board action is completed (the board process and the use of temporary appointments as an interim measure are discussed in detail in the recruitment and placement section) prevents many high-quality nurses from pursuing employment with VA. These individuals felt that the board process essentially affirms prior management decisions. They thought management should set grade and pay directly to avoid delays which discourage potential candidates.

We interviewed only management officials. Nonetheless, managers' opinions did point out the positive aspects of the system. Of particular note was the confidence managers placed in boards of knowledgeable professionals to recommend basic personnel actions such as setting grade and pay. Managers saw the board mechanism as a more informed way to reach basic personnel decisions without the appearance of arbitrariness which can ensue when such decisions are made in a personnel office. They see the decisions of boards of professionals in the title 38 system as more acceptable (more fair) to their employees than the alternate mechanisms of the title 5 personnel system.

Line management's control over the board process, as discussed above, combined with its confidence in the quality of the decisions coming from the board process makes this process attractive to the VA managers we interviewed. The apparent managerial acceptance of the board process (and the limited employee concerns discussed in a later section) raises the question of whether a similar process could be applied in other agencies or within specific occupations.

Any profession with a well-established set of academic and skills standards such as engineering, architecture, or law could utilize a board system. Even occupations without well-established academic standards, such as procurement or personnel management, could be adapted to this system.

Our site visits at VA medical centers suggest that a board review process for making some personnel management decisions is well received if employees feel they are being judged by their professional peers. It is interesting to note that in our interviews, we identified only one case in which an employee had appealed a board decision. While not conclusive, this suggests that grade and pay setting through such a peer review system would be viewed as being a more fair method than by application of rigid rules by those outside the occupation.

RECRUITMENT AND PLACEMENT IN THE TITLE 38 SYSTEM

Summary: *Unlike the title 5 personnel system, the title 38 system does not require competition for initial hiring or for internal placement. At the sites visited, very few formal rating procedures are used. Although actual recruitment and placement procedures vary, at all sites visited and in each occupation reviewed, line officials coordinate the process with little participation by the operating personnel office. We found no evidence that the absence of competition and formal procedures generated any appearance of discrimination. Quality of candidates is monitored through the review of each physician appointment by a Dean's Committee and by the review of each appointee by a standards board in all title 38 occupations.*

• Overview

The rank-in-person concept in the title 38 personnel system applies to all occupations within the personnel system. The central institution of the rank-in-person system—the standards board—is an integral part of the placement process for all title 38 occupations. While some title 38 occupations are covered by certain title 5 personnel system provisions, such as the performance management system and the adverse actions and appeals system, in recruitment and placement matters all occupations are covered exclusively by title 38 provisions.

The title 5 and title 38 requirements for recruiting and placing candidates are markedly different. Title 5 of the United States Code requires that some form of competitive examining be carried out for most initial hiring. Title 5 requires that "[a]n individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted* * *."[12] Title 5 specifies how lists of eligibles will be formed into registers, the order in which eligibles will be referred to agencies, the number of candidates who may be actively considered for a vacancy (three), and specific additional points to be added to the examination scores of veterans and disabled veterans. Further, instructions based on the law and regulation require competition for promotion from position to position within the title 5 personnel system.

In contrast to title 5, title 38 of the law requires no formal rating and ranking for appointment and, surprisingly, since this system is focused on the care of veterans, the law requires no veterans preference in appointments. Further, title 38 does not require any competition for internal placements with promotion potential.

The VA rules written from title 38 of the law require only that people appointed in title 38 occupations meet the qualifications standards for their positions and certain other basic requirements such as citizenship (which may be waived in some circumstances). The qualifications standards for title 38 occupations, which are contained in MP-5, Part II, are written for each grade of each occupation. For all occupations they specify the basic entry requirements (expressed as minimal educational requirements)

[12] 5 U.S.C. 3304(b).

and for most occupations the possession of a current license to practice from one of the 50 States or one of the U.S. territories. Without further legal or regulatory requirements, local managements operate with a wide latitude of discretion in hiring in the title 38 occupations.

We wanted to know how the actual recruiting and placement process was carried out at the local level. Since the title 38 regulations and instructions give local officials wide latitude in their actual methods, we were interested in finding out who made the actual hiring decisions and on what basis. At all eight medical centers we visited, distinctly different recruitment and placement approaches and procedures were used for each of the three occupations on which we focused.

Although different approaches were used for the various occupations and few formal criteria were used in recruiting and selecting, we found no indication of discrimination in the process.

We found no evidence that the title 38 recruitment process was inherently discriminatory. In fact, the greater flexibilities of recruitment under title 38 allow the medical centers we visited to engage in effective targeted recruitment. We asked the Nurse-Recruiters, who coordinate the recruiting of registered nurses and practical nurses, if they visited schools with high minority enrollments. All indicated that they did.

VA's statistical record for the employment of women and minorities in the title 38 occupations compares favorably with the representation of these occupations in the civilian labor force, suggesting that the title 38 placement procedures do not cause bias.

While we did not find any evidence of discrimination problems in the occupations studied at the medical centers we visited, we do not know from this study whether the title 38 procedures are less effective, as effective, or more effective than the title 5 procedures in achieving affirmative action goals.

- **Recruiting and Placing Physicians**

As noted above, physicians appointed to affiliated VA medical centers are subject to the concurrence of the Dean's Committee prior to appointment. (Approval of the appointment of resident physicians in affiliated training programs is not handled by the Dean's Committee but as part of the affiliated medical schools residency program.) However, we found in our interviews with local managers that Dean's Committee concurrence essentially formalizes the prior agreement of key VA and medical school officials on appointment of an individual.

We asked each Chief of Staff and Medical Center Director whom we interviewed how physicians were actually recruited and placed. Responses revealed that Medical Center Directors and Chiefs of Staff have little direct involvement in the process. Either a search committee is formed, or the chief of the clinical service involved (e.g., Chief, Surgical Service) coordinates the recruitment and the necessary approvals in the placement process.

In all the medical centers visited, advertisements in professional journals and personal contacts of faculty members form the principal means of locating physician candidates. The combination of specialized skills and expertise which medical schools and the affiliated VA

medical centers seek to identify in each candidate for a single physician vacancy makes the recruiting process difficult. In addition to board certification in a speciality such as internal medicine, a subspecialty (e.g., endocrinology) is usually needed, and often a specialized expertise in some disease process (e.g., diabetes mellitus) is desired in a candidate for a single position to complement the knowledges of other faculty members. All those who apply are screened for possession of needed skills and desired characteristics.

Usually the screened candidates are reviewed by the chief of the clinical service at the VA medical center and the chairman of the department at the affiliated medical school (e.g., the Chief, Medical Service, and the Chairman of Internal Medicine). They consult those whom they feel appropriate in the given circumstances. Naturally, the VA Chief of Staff and the Dean of the medical school concur in any final hiring decision before submitting an individual's name for formal approval. None of the eight medical centers we visited has any formal rating and ranking process for physicians. The medical centers' methods for considering physicians are not reduced to written policy.

While selection of physicians is still officially concurred in by the Dean's Committee and their qualifications reviewed by the physician standards board before final appointment is made, these approvals formalize the agreement already reached by the affected parties. The informal manner in which the real decisions on hiring physicians are made reflects the "gentlemen's agreement" upon which many of the affiliation decisions are based.

- **Recruiting and Placing Nurses**

Appointment of registered nurses (R.N.'s) and practical nurses does not require the concurrence of the Dean's Committee as does the appointment of physicians. The basic qualifications of R.N.'s and practical nurses are stated in terms of required educational attainment and the possession of a valid license in one of the 50 States or U.S. territories. In addition, U.S. citizenship is normally required but may be waived under some circumstances. As with all other title 38 occupations, there is no formal examination or rating and ranking requirement for appointment or for promotion.

In each of the eight VA medical centers we visited, we interviewed the Chief, Nursing Service, and the chairpersons of the Nurse Professional Standards Board and the Practical Nurse Standards Board. In addition, we met with the person who coordinated the nursing recruitment program. In six of the eight medical centers, a specific R.N. was designated as full-time Nurse-Recruiter. In another (New York City), two part-time R.N.'s shared the responsibility as Nurse-Recruiter, and in the remaining center (Martinez, CA) recruiting duties were shared among the administrative hierarchy of the Nursing Service, with the Assistant Chief (full deputy to the Chief Nurse) coordinating the efforts.

In all medical centers we visited, applicants for R.N. and practical nurse positions typically deal exclusively with the Nursing Service. Those making inquiries to the personnel office are referred to the Nursing Service for information and for the application process. At all eight sites visited, the Nursing Service maintains control of the applications and other records on applicants until the applicants are hired or so long as applicants are under active consideration.

Since the personnel office does not have to ensure that the very elaborate procedures required by the title 5 competitive system are carried out, there is no reason that Nursing cannot handle the procedural and substantial steps in the recruitment and placement process. Carrying out almost all activities for the recruitment and placement of R.N.'s and practical nurses within the Nursing Service reduces coordination problems and provides nursing officials with a greater sense of control over the process.

At the sites we visited, a single person initially interviews all R.N. and practical nurse candidates. This is usually a Nurse-Recruiter. After the initial interview, applicants are interviewed by the head of a single nursing unit in the applicant's area of interest (e.g., surgery, intensive care) where there is a vacancy.

The official selection process for permanent appointment of R.N.'s and practical nurses calls for the Chief, Nursing Service, to refer an individual to the appropriate standards board, which recommends appointment at a specific grade and step or nonselection. This recommendation must be concurred in by the Chief, Nursing Service, and then officially approved by the Medical Center Director.

In actual practice, in all the medical centers we visited, the authority to offer jobs to R.N. and practical nurse applicants is delegated to the Nurse-Recruiter. The head nurses we interviewed said they had significant input into which applicants were hired for their units, but that the Nurse-Recruiter made the final offer.

Although the initial offer of a job is made by the Nurse-Recruiter, the recommendation of a standards board and approval by the Medical Center Director are still necessary for a permanent appointment. Because the standards board typically requests transcripts and appraisals from prior employers on each person and reviews these before making its recommendation on a permanent appointment, 60 to 90 days typically pass before an employee can be given a permanent appointment.

Since most applicants are seeking an immediate change in employment, this 60- to 90-day period is unacceptable to them. To accommodate candidates immediately, the Nursing Service uses an authority in title 38 which allows it to make a temporary appointment pending completion of the board process. At the eight sites we visited, almost all initial appointments of R.N.'s and practical nurses are made on a temporary basis. This is done with the understanding that a conversion to a permanent appointment will be made upon receipt of the necessary references and transcripts and approval by the standards board. All of the medical centers take care to inform new employees that the final determination on permanent appointment and pay level will be made through the board process.

While the board process causes some delays, the nursing officials we interviewed greatly preferred the title 38 placement procedures to those in title 5. Most VA medical centers hire nursing assistants, who are covered under title 5 procedures. The nursing officials we interviewed found the slowness in the OPM certification process and the quality of candidates from the OPM registers intolerable. They felt that the title 5 process tied their hands completely, whereas the title 38 process gave them control over the sources of candidates and some control over grading and pay.

Although title 38 law, regulation, and instructions do not require competition for internal promotions or placements of R.N.'s or practical nurses, we wanted to know if medical center officials had devised any consistent practices for providing such competition. We asked the Chiefs, Nursing Service, and Nurse-Recruiters we interviewed if they had any standard procedures for providing systematic competition either for appointment or internal placement.

All of those interviewed told us that they did not have any procedures for hiring which would allow them to systematically compare one candidate with another. The only exception to this was the New York City medical center, which uses such a system for certain high-potential positions. Otherwise, we were told that when considering candidates for appointment, Nursing Service interviewers relied on the education and experience of the candidates combined with personal attributes, but that no policy stating criteria or other procedures had been written.

We also asked whether Nursing Services had any formalized procedures for considering internal applications. At all of the medical centers we visited, Nursing Services notify their staffs of openings and all have at least an informal system to allow R.N.'s and practical nurses to move from one nursing unit to another. In most cases, this is a compilation of current vacancies within Nursing Service which is circulated to each unit. However, only two of the medical centers we visited—Washington, DC, and New York City—have written policies which specify the manner in which internal applications are considered.

One reason we wanted to know about procedures for considering internal applications is that certain nursing positions offer experiences which cannot be obtained in typical staff nursing positions. These experiences often enhance an incumbent's qualifications and, thus, that incumbent's promotion potential. Examples of such staff positions include nurse-instructor and nurse clinical specialist. Likewise, initial assignment to a supervisory position such as head nurse and movement through the supervisory chain in nursing provide levels of experience which are qualifying for higher grades.

Because of the desirability of such positions, we asked nursing officials if they had a formal policy or procedure for selecting individuals for positions which offered higher quality experience (and, thus, greater promotion potential). In all cases except New York City, the medical centers had no formal method for making these or other selections. New York City, by contrast, actually had a methodology by which each candidate for high-potential R.N. positions is rated on factors based on knowledges, skills, and abilities. The New York City medical center convenes a panel of R.N.'s who use their subject-matter expertise to rate and rank both internal and external applicants for such positions. Thus, of the eight sites visited, only one actually provides any rating and ranking of candidates for any R.N. positions, and none provide such evaluation techniques for practical nurses.

While most of the medical centers we visited do not have criteria for rating and ranking candidates for R.N. positions, they do impose additional qualifications for many positions

beyond those in VA's official qualifications standards. For example, four of the Chiefs, Nursing Service, we interviewed specifically spoke of the requirement that all first-level supervisory R.N.'s (head nurses) have a bachelor's degree. Several Chiefs pointed out the requirement that Clinical Specialist positions be filled only by those with master's degrees. We verified with VA's central office that there is no such qualification standard. The additional "qualifications" were either pulled from a VA program guide which lacks regulatory impact or were locally imposed requirements based on their desirability as perceived by local nursing officials.

It was interesting that, when pressed as to why a master's degree would be necessary for a Clinical Specialist position, only one of the Chiefs, Nursing Service, was able to point to the program guide which speaks to the master's degree. The others we spoke to were unable to provide an analysis to support the need for the requirement and seemed surprised to be questioned about it. A typical response was the direct statement, "You can't be a clinical specialist without a master's degree." This illustrates the lack of restraint VA managers feel in imposing additional qualifications requirements without regulatory authority.

The ability of VA medical center managers to impose requirements for certain positions in excess of those required by the agency's qualifications requirements is in sharp contrast with the situation in the title 5 system, where all qualifications requirements must be approved by OPM. Even then, OPM's determinations have been challenged by Federal employees in hearings before MSPB.[13]

- **Ensuring Quality in Recruiting and Placement**

As indicated above, our onsite visits show that while local managers do impose additional qualifications for certain positions (e.g, master's degrees for nurse clinical specialist, subspecialties for physicians), they do not generally rate and rank candidates as is typically done in the title 5 personnel system. Overall, the methods used in the title 38 system to identify and place candidates do focus on quality. The ways by which the VA medical centers we visited select candidates, while differing in detail, always focus on the knowledges and skills of the individuals being considered as understood by professional peers. Only physicians are actively involved in recruiting and placing physicians. Only nurses are involved in recruiting and placing of R.N.'s and practical nurses.

Although qualifications standards are written for the title 38 occupations, these standards are not tested for content validity. Further, neither VA nor the medical centers we visited have developed formal criteria for selection. Nevertheless, the standards boards and management officials appear to utilize the common understanding of those within the particular profession and workplace of what is required in a particular role in making selections. The application of these established professional standards by boards of professionals combined with the licensure requirements of the States, while not ensuring that the highest quality individuals are hired, does ensure that candidates do meet a quality standard.

[13] An example of this is the MSPB case of Mullett et al. v. Office of Personnel Management, which challenged the legitimacy of OPM's minimum educational requirements for entry into the Medical Technologist occupation. OPM entered into an agreement in this case reducing qualifications requirements on a study basis.

Another set of contemporary circumstances limits the intrusion of nonquality factors into selections. The current supply of registered nurses and practical nurses is lagging behind the demand. As a result, medical centers must diligently seek candidates rather than differentiating among numerous candidates waiting for jobs. The shortage of registered nurses is so acute that seven of the eight VA medical centers we visited had requested and received waiver of the citizenship requirements for R.N.'s to increase their potential pool of applicants. In Los Angeles, we were told that Filipino R.N.'s were a major source of recruitment for the medical center.

Under such shortage circumstances, the imposition of an elaborate comparative rating of candidates to ensure the highest quality candidates becomes unnecessary and inefficient. In a recent MSPB study, we concluded that OPM should continue to grant direct-hire authority for title 5 positions—which would waive formal examining—in cases where there are few applicants available.[14]

In a broad sense, the title 38 system provides for appointment and promotion by merit. While lacking the procedural rigidity of the title 5 personnel system, which requires the creation of validated examinations, rating and ranking, and related procedures, the title 38 procedures are based on evaluating well-accepted professional standards of achievement. The use of standards boards to review the qualifications of each new hire and each employee before promotion reinforces meritorious aspects of the personnel system.

The application of title 38 placement procedures beyond the current occupations and beyond the Department of Veterans Affairs seems a reasonable alternative to the complex title 5 provisions in some cases. In the numerous professional occupations with a shortage of applicants, the title 38 approach seems to make more sense than the current approach of the title 5 system. As one of the Volcker Commission papers stated about title 5:

> * * *the basic components of the [title 5] system reflect the demographic realities of the late nineteenth century. For many federal agencies, many occupations and many regions of the country, the contemporary reality is that personnel systems cannot screen potential employees out, but must gather them in. Demographic projections for the next twenty years demonstrate very clearly that to be competitive in these activities, the federal government must be flexible, aggressive and innovative. The current [title 5] system, however, is set up precisely to discourage such qualities.[15]

In the title 38 occupations, where professional qualifications are well established and are the basis for placement and advancement, the quality of candidates is being effectively evaluated by standards boards despite the lack of comparative rating procedures. The expansion of the peer review boards to the evaluation of at least some other professional occupations throughout the Federal Government could prove to be a more effective means of gathering in people with scarce skills. Title 38's procedures form a model which would bear study for those considering wider reforms in the title 5 system.

[14] U.S. Merit Systems Protection Board, "Attracting and Selecting Quality Applicants for Federal Employment," Washington, DC, April 1990, p. 34.

[15] Patricia W. Ingraham and David H. Rosenbloom, "The State of Merit in the Federal Government," National Commission on the Public Service, Washington, DC, June 1990, pp. 40-41.

PAY ADMINISTRATION

Summary: *The title 38 system allows local managers greater flexibility in setting individual pay than does the title 5 system. For example, they can adjust steps within grade based on qualifications. A bonus system for physicians permits local managers to supplement the base salaries. Newly enacted legislation grants local VA officials the authority to set registered nurse pay schedules at levels competitive in their local communities.*

When it was originally established in 1946, the title 38 personnel system was created with pay schedules separate and independent from those of the competitive civil service. This allowed the Veterans' Administration to set its schedules at levels which would attract candidates without being subject to the restrictions of the regular civil service.

In 1952, the title 38 system was designated a "statutory pay system" by law.[16] This action tied the levels in the title 38 pay schedules to those in the civil service, thus leaving separate, but no longer independent, title 38 pay schedules in place. When expanded-function dental auxiliaries, optometrists, physician assistants, and podiatrists were added to the original title 38 occupations in 1975, they were also paid from separate title 38 pay schedules. The separate title 38 pay schedules are constructed on the same matrix as the General Schedule, with 10 steps in each grade with equal increments between steps.

As stated earlier, the title 38 occupations added since 1975 have been so-called "hybrids." These occupations do not have pay schedules specific to the occupation; rather they are paid under the General Schedule. Thus, all occupations within title 38 are paid either under the General Schedule or by separate schedules which are legally tied to the General Schedule and constructed on the same matrix. Under these circumstances, the title 38 system is restricted in the flexibility of its scheduled rates. Where VA has had flexibility in the title 38 occupations is in its pay administration rules.

Pay administration under title 38 has been more flexible than it is under title 5. VA's central office may set special rates in any of the title 38 occupations at any of its medical centers based on the need to have pay competitive with other health care providers in the community. While special rates are available under title 5, normally, agencies must petition OPM to set these rates.[17]

[16] 5 U.S.C. 5301.

[17] VA has a unique legal authority (5 U.S.C. 4107 (g)(1)(B)) which allows it to set special rates for title 5 health care occupations within the Department. Under this authority, OPM must specifically overrule VA's rate determination or the rate becomes effective without OPM approval.

In addition, title 38 standards boards routinely recommend initial pay upon appointment above the first step of a grade based on the qualifications of the individual. In contrast, until legislative change in 1990 extending applicability to all grades, title 5 statutory provisions limited the authority to set initial pay above the first step of a grade to GS-11 and above.

The pay administration rules for title 38 and title 5 are currently changing. Legislation passed in August and November of 1990 makes significant changes in the pay systems of both title 38[18] and title 5.[19] The actual impact of the two laws amending these titles cannot be known until the regulations and instructions implementing them are written and put into effect. (Some of the title 5 changes will not be implemented until fiscal year 1994.) Therefore, most of our comparisons of the title 38 pay provisions with those of title 5 are based on the situation prior to the implementation of the new legislation.

It should be noted that the recently enacted title 5 pay legislation recognizes the potential applicability of title 38 methods to health care occupations covered under the title 5 personnel system. The new law reads:

> The Office of Personnel Management may, with respect to any employee [in health care occupations], provide that one or more provisions of chapter 73 of title 38 shall apply [in lieu of current classification and hours of work provisions].[20]

Contact with OPM staff indicates that they are studying the potential usefulness of the title 38 provisions in paying health care occupations.

An additional flexibility in title 38 allows advancement of one to five steps within grade for high-quality performance or achievement as an incentive award. The number of steps granted varies with each occupation and depends upon whether the advancement is granted based upon performance or achievement. This contrasts with title 5, where only one step may be granted for performance. The awards under title 38 for special achievement can cover a wide variety of achievements. Examples include board certification for physicians, certification of registered nurses in a specialized care area, and election to office in a professional society.

In addition to providing flexibilities within scheduled basic salary, title 38 provides for additional pay (not subject to pay ceilings and other restrictions) to physicians and dentists through a bonus system. The bonus system is separate from the special pay rates discussed above and provides a substitute for these special rates in the case of physicians since scheduled pay for physicians is significantly restricted by the statutory pay ceiling. This bonus system pays additional annual amounts to individuals in the physician and dentist occupations in increments based on professional achievement, organizational responsibility, longevity, full-time status, and geographic isolation.

There is a cap of $22,500 on the total bonus amount payable with the exception of geographic isolation pay, which can add a total of $5,000 to the amount payable. In contrast, no equivalent system for supplementing scheduled rates is available in title 5.

Our interviews with VA managers confirmed that the pay administration flexibilities which the VA and local VA medical centers

[18] Public Law 101-366.

[19] Public Law 101-509.

[20] Ibid., Sec.205.

have been able to exercise have helped them compete for scarce health professionals. However, these managers, who are mostly in highly competitive urban areas, pointed out that the greater flexibilities offered by the title 38 system are becoming inadequate to keep VA competitive with other employers in their geographic areas. The combined compensation of scheduled salary rates and bonuses have proved inadequate to attract physicians in scarce specialities, and the special rates in place for registered nurses have, in some areas, reached a statutory ceiling, so that higher special rates cannot be authorized.

The pay situation for physicians can be illustrated by a hypothetical example. We will assume a full-time physician who is new to VA, in a scarce medical speciality, with excellent credentials. The physician would be paid at the top (10th) step of the Chief Grade: $79,675 (the highest scheduled pay available to a staff physician as of January 1991). In addition, this individual would be eligible for a bonus. With the bonus, this hypothetical physician's annual compensation would be:

BONUS INCREMENTS:	
Primary Special Pay	$7,000
Full-Time Status	6,000
Medical Specialty With Extraordinary Recruitment or Retention Problems	4,000
Board Certification	2,500
TOTAL BONUS	$19,500
BASE PAY	79,675
TOTAL COMPENSATION	$99,175

This total is far short of what is needed to attract top-quality physicians in a high-cost urban area. Directors and Chiefs of Staff in the urban medical centers repeatedly told us that they were not competitive for physicians in many specialities, even with the bonus system. VA medical centers have had to rely on the financial support of their affiliated medical schools to recruit and retain high-quality physicians.

As an example, one Medical Center Director explained the arrangements his medical center had made to recruit an anesthesiologist. Since the salary needed to attract a high-quality candidate could not be generated through VA's pay system, an arrangement was made with the affiliated medical school for the selected candidate to be employed part time at VA and part time at the medical school. VA paid less than the medical school for its portion of the physician's time, so the university increased its pay to this individual to compensate. Essentially, the medical school subsidized the VA program by approximately $80,000 per year in order to maintain parts of its affiliation.

In another VA medical center we visited, the pay schedule would not attract a high-quality cardiac surgeon. Through an agreement with its affiliated medical school, the VA medical center was able to attract a high-quality candidate. However, the medical school had to provide a supplement of approximately $40,000 to the surgeon's salary to meet his compensation requirements.

In general, the supplementation of salary by the affiliated medical school can be arranged for physicians but not for other occupations. While the special rates program for R.N.'s and practi-

cal nurses has assisted in recruiting and retaining employees, the nursing officials we interviewed noted some other problems with the special rates programs and other aspects of the compensation system. Two major problems were mentioned consistently: pay compression and the lack of additional compensation for head nurses.

The pay compression phenomenon occurs when the special rates authorized to attract new employees approach the statutory limitations. The 10 steps in each grade of the various title 38 pay schedules and in the General Schedule have traditionally served to provide an incentive for retention by allowing for periodic step increases for employees who remain in a grade. As special pay rates increase, long-term employees see new employees being paid at a rate that the long-term employees worked over time to achieve. Ultimately, when special pay reaches statutory limits all employees in a grade make the same amount of money regardless of tenure. This is certainly bad for morale and may adversely affect the retention rate of employees.

Nursing managers were also concerned that title 38 pay rules provide no differential for head nurses. Since the title 38 rank-in-person system does not reflect first-line supervisory responsibilities very well in the qualification standards, head nurses are not necessarily at a higher grade than those they supervise. Under these circumstances, a number of head nurses are making less in base pay than some of the R.N.'s they supervise. And because head nurses typically work Monday through Friday during the day, they do not receive the additional pay for nights and weekends which their subordinates receive.

These major concerns of R.N.'s are addressed in Public Law 101-366, which was signed by the President on August 15, 1990. This law has several important impacts on the pay of registered nurses under title 38. Its major provisions are as follows. It:

- Reduces the number of R.N. grades from the current eight to four;
- Gives the Secretary of Veterans Affairs the authority to determine the number of steps to establish within each grade;
- Specifies a top pay within each grade at 133 percent of base pay and gives the Secretary authority to increase this to 175 percent;
- Allows directors of local VA facilities to increase base pay for each grade when Bureau of Labor Statistics surveys show that the beginning rate of compensation for registered nurses in a locality is higher than VA's starting rate;
- Provides for pay for head nurses "at a rate two step increments above the rate that would otherwise be applicable"; and
- Provides a basis for potentially extending this locality pay system to other title 38 occupations.

VA expects that the provisions of this law will be implemented in the Spring of 1991. The final impact of this law on R.N. recruitment and retention cannot be known. However, the concept of local managers within an agency setting pay for

professional occupations is an innovation in Federal pay. While provisions for paying professional employees on a locality basis in title 5 have just been enacted,[21] the title 5 provisions are not fully effective until 1994. Further, in title 5, the setting of rates and their area of applicability will be controlled outside of individual Federal agencies—let alone local installations. The authority of local managers within VA to make the determination on setting locality pay is a very significant delegation of authority.

Although title 38 has offered greater pay flexibility than title 5, and Public Law 101-366 will increase the title 38 flexibilities, the sites we visited still face problems with pay. Of the eight sites we visited, five were restricting their hiring of R.N.'s and practical nurses because of shortages of funds. We asked the Director of each medical center which we visited if the center could pay significantly more for employees within its current budget. All agreed that they could not absorb additional salary costs without reducing services. The additional salary dollars needed simply were not available.

Our interviews with managers at VA medical centers revealed that the pay flexibilities which have been available to local medical centers under title 38 have allowed these centers to better compete with other employers for scarce medical personnel. However, continuing competition from other employers and legal restrictions in Federal pay systems are becoming a major problem. The new law has the potential to give local managers the broadest authority over pay of any managers in the Federal Government. However, because of restrictions on overall salary dollars available to VA medical centers, the centers will not have carte blanche in setting pay. The salary dollar restrictions which local managements face should motivate them to set salaries conservatively to maximize the effectiveness of available salary dollars.

[21] Ibid.

EFFECTIVENESS AND EFFICIENCY OF TITLE 38

Summary: *The VA managers we interviewed did not find operating two personnel systems confusing. Local managers liked the flexibility of the title 38 system and generally preferred it over the title 5 system.*

• Administering Dual Personnel Systems

The title 5 personnel system has provided rules for a wide variety of employees and agencies, albeit a very large set of rules. The existence of an additional personnel system within an agency could complicate personnel administration.

In the case of VA medical centers, employees covered under the title 5 and title 38 personnel systems work in the same building and in many nursing units side by side under the same supervisors. Our site visits gave us the opportunity to ask a number of nursing officials how they felt about the dual personnel systems. We interviewed a total of 48 head nurses, 45 of whom supervise employees in both the title 5 and the title 38 systems. We asked each of them, "Do you find dealing with employees covered by different pay, leave, and performance systems confusing? Can you differentiate which rules apply to which employees?" Of this group of 45 head nurses 42 said that they were not confused by the dual systems and could differentiate the rules. Most of the comments indicated that the number of different rules for different situations within either personnel system was a far greater problem than differentiating one system's rules from the other's.

We asked the head nurses if "employees have concerns about disparate treatment as a result of [personnel system] rule differences." Of the 45 head nurses who supervise employees in both personnel systems, 18 pointed out areas where their employees are concerned about disparities. Of these, 14 pointed to the more generous pay differentials available to title 38 employees due to title 38's more generous calculation of the night differential and its provision of premium pay for Saturday work.

An additional four head nurses identified concerns over the much more generous annual leave system that R.N.'s enjoy. The practical nurses, who are covered under title 5 leave rules, and the nursing assistants, who are entirely under title 5, accrue 13 days of annual leave per year upon entry into Federal service, with an increase to an eventual 26 days' accrual per year after 15 years of service. In contrast, R.N.'s begin accruing 26 days of annual leave per year immediately upon entrance into Federal service.

While our interviewees did point out some concerns, it is interesting that they were confined to two issues—pay and annual leave—and that relatively few had identified concerns (18 of 45 on pay and 4 of 45 on annual leave). This combined with the response of 42 out of 45 head nurses that they had no difficulty dealing with the two systems suggests that the existence of two personnel systems side by side is not necessarily a source of major conflict or difficulty.

- **Effects of Delegation and Decentralization**

Local line management's control over the various aspects of the title 38 personnel system is clearly greater than its control over the title 5 system. The absence of formal examinations and rating and ranking procedures for appointments and for promotions allows managers greater flexibility and greater involvement in and control over the recruiting and placement processes. At all eight sites we visited, the recruitment and placement process is handled directly by the organization involved (e.g., Nursing Service, Surgical Service) rather than by the personnel office. Grading and pay decisions are made by standards boards which are closely aligned with management, thus giving line managers greater control over pay decisions than is permitted by the title 5 classification and pay administration systems.

Just the sheer volume of regulation and instructions which apply to the title 5 personnel system compared to the title 38 system limits local management control over decisions. As mentioned earlier, title 5 of the Code of Federal Regulations contains over 1,200 pages, and the Federal Personnel Manual, which provides the instructions for the title 5 system, contains over 6,000 pages. By comparison, the VA Manual MP-5, Part II, which contains the instructions for the title 38 system, fits into a single 2-inch ring binder. This minimal instruction allows local managers within VA greater flexibility in meeting local needs without the intrusion of regulation and centralized guidance in the process.

The recently passed legislation authorizing local VA managers to set pay for their registered nurses (and potentially other title 38 occupations) will give them even greater flexibility in pay.

The managers we interviewed at VA medical centers were universal in their preference for the title 38 system over the title 5 system. Many of the officials we interviewed said that one or more aspects of the title 38 system should be applied to <u>all</u> positions in their medical centers. One Medical Center Director said that all patient care positions should be covered entirely under title 38. Those we interviewed cited the greater control which they exercised over the recruitment, placement, and pay aspects of title 38 as a major incentive for converting more occupations to that system.

The title 38 system is perceived as more effective in meeting local needs than the title 5 system by the managers we interviewed. These perceptions are a fairly good measure of the effectiveness of the title 38 personnel system. The relative efficiency of the title 38 system, on the other hand, is much harder to measure.

The relatively small size of the personnel offices in VA suggests efficiency, but this measure may be of limited usefulness. Of the 21 largest Federal departments and agencies, VA has the least number of people in the personnel occupations for the number of employees served. VA has 1 employee in the personnel occupations for each 107 employees served versus 1 employee in the personnel occupations for each 68 served in the 21 largest Federal departments and agencies combined.[22]

VA's very efficient use of personnel employees is achieved without consolidating its personnel operations. Unlike many Federal departments which consolidate operating personnel offices by operating agency or by area or region, VA has an operating personnel office at each of its medical centers and regional offices.

[22] Source: U.S. Office of Personnel Management (data as of Sept. 30, 1989).

VA has a total of 214 operating personnel offices, the highest number of any Federal department or agency.

While these figures suggest a high level of efficiency in VA's overall personnel operations, it is difficult to calculate the impact of title 38 on the efficiency of these operations. For one thing, only 75,000 of the VA's overall work force of 250,000 are covered by title 38.

In addition, much of the recruitment, placement, and grade and pay setting activities in the title 38 system are carried out outside the personnel office, so that this work is not reflected in the personnel office staffing. Because the personnel work carried out by line managers in the title 38 system is so intertwined with their other functions, it would be exceedingly difficult to calculate the person-years of staffing that these functions contribute to personnel operations.

Nevertheless, the elaborate recruitment and placement features of the title 5 system, with the required announcement of each position and the rating and ranking of candidates for each vacant position, are entirely eliminated in the title 38 system. Likewise, the elaborate system of initially writing a description of each position, classifying it, and then periodically reviewing it for accuracy of description and classification, are entirely eliminated in the title 38 system. These activities generate a major portion of the workload in the typical Federal personnel office. It would be difficult to argue with the proposition that eliminating these functions has a positive impact on the efficiency of personnel management functions.

Overall, title 38 is viewed by its managers as far more effective than the title 5 system. Evidence also suggests that the title 38 system offers increased efficiency due to the integration of personnel activities into the line function and the absence of the title 5 placement and classification procedures.

TITLE 38 APPEALS SYSTEM

Summary: *The disciplinary action and appeals systems in title 38 are ponderous. Disciplinary boards must be established to recommend even minor disciplinary actions, and these boards must give each appellant an evidentiary hearing if requested. Managers find the disciplinary provisions the least effective part of the title 38 system.*

While managers we interviewed preferred the title 38 system generally and its placement and pay provisions particularly, they were universally negative on one aspect of title 38—its appeals process.

As we have noted elsewhere in this report, the occupations covered by the title 38 personnel system are divided into hybrid and nonhybrid occupations depending on how many of the provisions of the title 5 personnel system have been legally applied to that occupation. Those occupations brought into title 38 after 1975 fall into the hybrid category, with only the placement and pay aspects of their employment covered under separate title 38 provisions. Hybrid occupations are covered by title 5 provisions for performance management and conduct. Therefore, adverse actions taken against employees in the hybrid occupations are appealable to the U.S. Merit Systems Protection Board.

The occupations brought into the title 38 system in 1975 and before are covered by a separate disciplinary action system peculiar to the title 38 system. Actions taken under this separate system are not appealable to MSPB but are imposed and appealed entirely within VA. The occupations covered by the separate title 38 discipline system are:

- Dentist
- Expanded-Function Dental Auxiliary
- Optometrist
- Physician
- Physician Assistant
- Podiatrist
- Registered Nurse

Incumbents appointed into these occupations as permanent employees are subject to a 2-year probationary period. Upon completion of this probationary period, they accrue the right to a hearing prior to the imposition of any disciplinary action and the right to an appeal to the Secretary of Veterans Affairs of any action imposed. The definition of a disciplinary action in the title 38 system covers a wide range of actions against an employee ranging from a written admonishment to removal from employment. The title 38 definition for disciplinary actions encompasses actions which are similar to those appealable to MSPB under title 5 provisions (i.e., suspensions over 14 days, demotions, and removals).

Current provisions for disciplinary actions are based on 38 U.S.C. 4110. Under these provisions, any action which can be construed to be disciplinary requires that a formal proposal for disciplinary action be made and that a disciplinary board

be formed to weigh evidence and recommend action to a deciding official. (VA lists as "authorized disciplinary actions": admonishment; reprimand; suspension; demotion; and discharge.)[23] These provisions mean that proposals for even minor disciplinary actions must be forwarded to Washington to be formally processed under the provisions of the law.

Under current VA procedures, if a local medical center believes that discipline of an employee is warranted, the Director of that medical center may propose admonishment or reprimand of an employee covered under the title 38 provisions, or the Director sends a request for a proposal of more serious disciplinary action to VA's central office inWashington, DC. Such a request is reviewed by the Employee Relations Service of VA's Office of Personnel and Labor Relations, which looks at the evidence provided and makes a recommendation to the line official—the Associate Chief Medical Director for Operations—designated to propose disciplinary action. If evidence provided by the medical center is sufficient in his or her judgment, the Associate Chief Medical Director for Operations approves the request for proposal. The Employee Relations Service then generates the official proposal to the employee for the Associate Chief Medical Director's signature. A disciplinary board is then appointed Membership in the board is drawn from officials from other VA locations who are not parties to the issues involved and are typically professional peers of the employee.

The disciplinary board looks at the evidence of the case and makes a recommendation to the deciding official. Individuals against whom discipline has been proposed may have a representative and may request that the disciplinary board convene an evidentiary hearing. If the employee declines a hearing, the disciplinary board makes its recommendation based on evidence provided by the employee and by the medical center management.

After the disciplinary board has done its work, the findings go back through the Employee Relations Division in central office, which reviews the board's work for procedural adequacy and forwards it to the head of Veterans Health Services and Research Administration, the Chief Medical Director, who is the deciding official in all disciplinary cases.

The Chief Medical Director may adopt all or part of the disciplinary board's findings and impose the disciplinary action originally proposed to the employee or another lesser disciplinary action. If dissatisfied with the Chief Medical Director's decision, an employee may appeal the decision to the Secretary of Veterans Affairs. This appeal is based on matters of record and does not include the right to an additional hearing.

Such an appeal would again go through the Employee Relations Service for staff recommendation and would then be forwarded to the Secretary of Veterans Affairs for decision. At each step of the process, the official taking action is higher in the VA hierarchy. There is no provision within this system for administrative appeal outside the Department.

As may be seen from the description of necessary steps required before discipline is imposed, the process is quite lengthy. The process of forwarding every disciplinary action to VA's central office is itself time consuming. Additional time is necessary to assemble the

[23] VA Manual MP-5, Part II, ch. 8, par. 4b.

disciplinary board for deliberation, and delays are typical if a hearing must be arranged so as to meet the schedules of all involved. It is fortunate so few actions are pursued through this process. Only 57 disciplinary boards were formed in calendar year 1989 (VA's case tracking system does not provide the means to determine the outcomes in each of these cases).

Officials we interviewed at field locations expressed frustration with the discipline process in title 38. Four of the eight Medical Center Directors interviewed pointed to this process when asked what they thought was the greatest weakness of title 38, as did three of the eight Chiefs, Nursing Service. One Director said that the title 5 adverse action system was preferable. He said that while the appeal of a title 5 action went outside the control of the Department, title 5 actions were preferable as they were proposed at the local level and decisions were made there, thus, ensuring timely discipline. The lengthy proposal, hearing, and decision process which the title 38 procedures impose before action is taken caused him great frustration.

The slowness of the title 38 process may help account for the fact that only one of the eight Chiefs, Nursing Service, and none of the Chiefs of Staff we interviewed had initiated a disciplinary action within the past 2 years. We also asked the head nurses we interviewed if they had ever initiated a disciplinary action against an R.N. under their supervision. Only 4 of the 48 head nurses we interviewed had ever initiated such an action.

Legislation which would change the title 38 disciplinary provisions to make taking minor actions easier has been introduced in the 101st Congress. The impact of the pending legislation on the operation of the title 38 discipline system cannot be determined until such legislation is put in its final form, becomes law, and is implemented.

Current title 38 provisions for discipline contrast with title 5 in that under title 38 all charges are subject to investigation and recommendation by a disciplinary board (usually including an evidentiary hearing) prior to the decision to impose disciplinary actions. Title 5 requires no such boards or hearings prior to the imposition of actions. Title 38 also contrasts with title 5 in its appeals process. Under title 38, appeals are decided by the Secretary of Veterans Affairs by review of the record without additional hearing. Further, these appeals are processed through the management chain within the Department. By contrast, title 5 appeals for minor actions are handled through a grievance process, and more severe actions such as long-term suspensions and removals are appealed to the Merit Systems Protection Board. The Board provides for a neutral, outside review and provides a hearing process as part of the appeal.

CONCLUSIONS

As we found through our review, the exemption of VA's personnel system from many title 5 restrictions does not mean that VA's system lacks consistent, enforceable criteria for making personnel decisions. The absence of title 5's more elaborate procedures for publicizing jobs, for considering applications, and for rating and ranking candidates is compensated for by the review of each new employee by a standards board of health care professionals. Although in the current labor market, the overall shortages of professionals in the health care occupations alleviate the need for a system to differentiate large numbers of candidates, the title 38 board system continues to ensure that selected candidates do possess the professional skills required. Even if a job market which is more favorable for employers did exist, the title 38 boards would provide this review of the quality of candidates selected.

The role of the standards boards in setting the grades of employees provides an alternate to the systems of classification and job grading which are used in the title 5 personnel system. The managers we interviewed saw the title 38 grade-setting process as easier and more equitable to employees than the current title 5 classification system. The title 38 methodology for setting grades has potential for use in title 5 in at least some agencies, especially in professional occupations.

In the tight labor markets found at the medical centers we visited, the greater pay flexibilities provided by the title 38 system compared to the title 5 system were seen by local managers as an essential tool for competing with other employers in their communities. These managers' chief concern was that under the title 38 pay flexibilities, pay levels have been stretched to the maximum which may be paid and they still cannot compete fully in their job markets.

Some of the VA managers' concerns have been addressed in recently passed legislation which allows local VA Medical Center Directors to set R.N. salaries based on pay in the non-Federal sector. Locality pay provisions for professionals have also been enacted for title 5. However, under the title 5 provisions, officials of Federal agencies (either at the agency or local level) will not be able to set their own pay rates. As VA implements the title 38 locality pay provisions, other Federal officials should watch VA closely for the lessons it offers in applying such provisions to a much wider range of occupations and pay systems.

Our onsite visits revealed that the title 38 system is directly controlled by line managers, and is in many ways a model of the delegation and decentralization of personnel authorities which OPM has advocated for the title 5 system.[24]

[24] See U.S. Merit Systems Protection Board, "Delegation and Decentralization: Personnel Management Simplification Efforts in the Federal Government," Washington, DC, October 1989.

We found that the title 38 provisions were well accepted by managers. In fact, managers complained that in working with title 5 occupations they lacked the flexibilities they exercise with title 38 occupations. In general, the concern expressed by the managers we interviewed was that more of the VA work force was not covered under title 38 provisions. We did not hear any concerns that the provisions of title 38 allowed unfair treatment of those in that personnel system compared to the title 5 system.

VA managers' comments about the title 5 system parallel the conclusions of the Volcker Commission on the operation of the title 5 system:

> Today, rules and regulations related to federal personnel administration fill thousands of pages. In 1990, the federal government's merit system **does not work**. These procedures have created a system in which recruitment, testing and hiring of employees is often conducted independently of those who will manage and be responsible for the employees' performance. The personnel function is often viewed independently—indeed, often in isolation—from management concerns and priorities.[25]

While local VA managers would prefer to see more of their work force covered under title 38, they did not express much concern over the burdens of handling separate personnel rules for different occupations. If those we interviewed are representative, the existence of separate personnel systems does not create a significant additional administrative burden. While not conclusive, the evidence available suggests that the existence of the title 38 system helps to reduce the administrative burden in personnel administration.

The separate title 38 disciplinary system does not provide for appeals outside the Department of Veterans Affairs. However, the managers we interviewed were not concerned about the integrity of the title 38 process. Local managers are concerned that title 38 disciplinary procedures require review by and usually an evidentiary hearing before a disciplinary board before even minor discipline may be imposed. They feel that the lengthy disciplinary board process prevents the timely—and thus, effective—imposition of discipline, particularly of the more minor corrective actions.

Our review indicates that many of the practices of the title 38 system provide greater flexibility and control to line managers, while ensuring that those within title 38 are well qualified and are dealt with in an equitable manner. Certainly, these attributes make the title 38 system worthy of examination when considering changes to the current mechanisms of the title 5 personnel system.

[25] Ingraham, op. cit., p. 41.

RECOMMENDATIONS

The title 38 personnel system in the Department of Veterans Affairs uses approaches which vary considerably from those used in title 5. These approaches have proved themselves very effective in helping VA compete for scarce health care personnel and to maintain its close relationships with the Nation's medical schools. However, since the title 38 approaches have flowed from VA's unique needs and have been adapted over time to the Department's organizational environment and culture, they are unlikely to transfer directly to other Federal agencies. Nonetheless, with modifications, some features of the title 38 system are worth considering as potential alternatives to current title 5 procedures within at least some agencies or occupations. For example, those concerned with amending the provisions of the title 5 system to better meet the needs of employees and managers may wish to consider the following:

- The Use of Peer Panels as Part of the Grade and Pay Setting Process.

  While the authority for setting grades and pay for employees in title 38 is still held by managers, their decisions are based on the recommendations of standards boards. In the VA environment, managers think that the board process has increased the acceptability of these decisions to employees. Using peer panels in other environments could potentially reduce any perceptions that grading and pay decisions in such environments are inflexible and do not reflect an understanding of the actual work environment. Any use of peer panels requires that they be located as close to the work as possible, and that they be sensitive to the culture of the organization in which they operate.

- Giving Local Managers More Personnel Management Responsibility.

  The satisfaction of the VA managers we interviewed was, to a large extent, based on their direct involvement in the title 38 personnel processes and decisions. This indicates that any reform measure for Federal personnel systems needs to focus on providing greater line management participation in the personnel management process through delegation and decentralization.[26] The title 38 system offers a number of specific methods for placing decisionmaking in the hands of managers and allowing local officials to carry out their personnel management responsibilities without detailed procedural requirements. While the title 38 personnel system's methods may not be directly applicable to the current title 5 situations, these methods do provide some interesting approaches which could be adapted to other Federal personnel environments.

[26] For further discussion of title 5 delegation efforts, see, U.S. Merit Systems Protection Board, "U.S. Office of Personnel Management and the Merit System: A Retrospective Assessment," Washington, DC, June 1989, p. 7.

- Lessening the Administrative Restrictions on the Hiring of Noncitizens to Assist Agencies in Filling Positions Requiring Specialized Skills.

  The shortage of candidates with specialized skills means that the Federal Government must consider noncitizens for more positions. The title 38 restrictions on use of noncitizens are comparable to those in title 5. Noncitizens may be hired under title 38 only upon waiver and may be hired only in nonpermanent status. The major difference is administrative. Under title 38, VA's central office waives citizenship requirements for an entire occupation at a specific medical center. Under title 5, OPM grants a waiver for a specific position. A waiver procedure which would grant a wider waiver in title 5 occupations would be desirable.

APPENDIX

ONSITE INFORMATION GATHERING

• OFFICIALS INTERVIEWED

We conducted onsite interviews at eight VA medical centers to collect information for this study. Seven of the eight medical centers are located in urban areas where competition among health care organizations, both public and private, for scarce health care professionals is intense. We interviewed those officials who must deal with the day-to-day operation of the title 38 personnel system. At each medical center we interviewed the following officials:

- **Medical Center Director**—This official is the head of the medical center. The Director is responsible for the budget and operation of the medical center and reports to the Veterans Health Services and Research Administration through a regional director. Incumbents of these positions may be physicians but are more typically trained specifically in public health or hospital administration.

- **Chief of Staff**—This official is a physician who is the chief clinical officer of the medical center. The Chief of Staff is responsible for all the direct patient care operations of the medical center. Heads of all the clinical services (e.g., nursing, medicine, surgery) report to this person.

- **Chief, Nursing Service**—This official is always a registered nurse. The Chief, Nursing Service, is responsible for all nursing services in the medical center. This includes all of the inpatient nursing units and nursing personnel supporting operating rooms, specialty units such as hemodialysis, and outpatient clinics. Control is exercised through two or more layers of supervision.

- **Nurse-Recruiter**—This is the title for the person given primary responsibility within the Nursing Service for recruiting and placing registered nurses and practical nurses. In those medical centers where that responsibility is shared, we interviewed at least one of those sharing the responsibility.

- **Chair, Nurse Professional Standards Board**—This is a registered nurse nominated by the Chief, Nursing Service, and approved by the Medical Center Director to chair the board which sets the grade and pay for each registered nurse in the medical center.

- **Chair, Practical Nurse Standards Board**—This is a registered nurse nominated by the Chief, Nursing Service, and approved by the Medical Center Director to chair the board which sets the grade and pay for all practical nurses.

- **Head Nurses**—These are registered nurses who are responsible for all nursing care in the unit under their supervision. They are the first-level supervisors within the Nursing Service and typically supervise registered nurses, practical nurses, and nursing assistants. While other titles are sometimes used for these positions, we use "head nurse" consistently throughout this report. They report through nursing supervisors to the Chief, Nursing Service. We interviewed a minimum of six head nurses at each medical center.

- **Personnel Officer**—This individual is responsible for personnel management advise and support to the Medical Center Director and to managers, provided either personally or more typically through a subordinate staff of personnel specialists and assistants. This individual is also responsible for enforcing legal and regulatory requirements of both the title 38 and the title 5 personnel systems.

- **Personnel Specialist in Charge of Nurse Recruitment**—This individual reports to the Personnel Officer and provides the Nursing Service with technical support in recruitment and placement. This person is typically designated as a technical advisor to the Nurse Professional Standards Board and the Practical Nurse Standards Board.

In addition to this standard roster of officials, we interviewed a few additional officials as recommended by those onsite.

• MEDICAL CENTERS VISITED

The medical centers visited provide an interesting variety of sites and specialized services. Each has a unique set of circumstances which affects the manner in which it operates. The following is a thumbnail sketch of each of the medical centers:

VA MEDICAL CENTER, LONG BEACH, CALIFORNIA

5901 E. 7th Street
Long Beach, CA 90822

Principal Medical Affiliate: The University of California at Irvine

Number of Beds Operated: 1,061

Number of Outpatient Visits in FY 1990: 331,000

Number of Employees: 3,600

Number of Physicians: 226

Number of Registered Nurses: 590

Number of Licensed Vocational Nurses: 119

The VA Medical Center, Long Beach, is located in the midst of the Los Angeles-Long Beach metropolitan area; this area and the adjoining Santa Ana-Anaheim metropolitan area have a combined population of over 13 million.

The medical center is located about 12 miles from the University of California at Irvine (UCI) main clinical facility and approximately 20 miles from UCI's main campus. Staff residents are paid through contracts with UCI. The medical center offers a full range of inpatient and outpatient hospital services to eligible veterans. It houses VA's largest spinal cord injury center, which serves as a system-wide resource in this specialty for VA's medical centers.

Management officials point to their location as both an advantage and a disadvantage. The cost of living in the Los Angeles basin (particularly housing costs) can discourage skilled professionals from relocating from other parts of the country, while the climate and cultural and recreational opportunities act as a powerful incentive for many people.

In the local job market, officials point to VA's lack of competitive pay in many areas. Despite special pay in over 40 occupations, management officials view private sector employers as having the advantage in pay and, in some cases, benefits and intangible items such as shift flexibility.

VA MEDICAL CENTER, WEST LOS ANGELES, CALIFORNIA

Wilshire Boulevard at Sawtelle
Los Angeles, CA 90073

Principal Medical Affiliate: The University of California at Los Angeles (UCLA)

Number of Beds Operated: 1,621

Number of Outpatient Visits in FY 1990: 442,000

Number of Employees: 4,200

Number of Physicians: 269

Number of Registered Nurses: 544

Number of Licensed Vocational Nurses: 112

The West Los Angeles medical center is one of VA's largest facilities. It is located in the western section of the city of Los Angeles on Wilshire Boulevard at the San Diego Freeway. It is located less than a mile from the main campus and clinical facilities of its principal affiliate, UCLA.

The medical center has an unusual history. Although under a single top management and administrative support structure, the medical center is a combination of what were two hospitals across Wilshire Boulevard from one another: the Brentwood Division, which is primarily a neuropsychiatric facility, and the Wadsworth Division, which is primarily a general medicine and surgical facility. This separateness is continued in the medical center's clinical facilities, with each division of the medical center having its own chiefs of clinical services. For example, there are two Chiefs of Staff and two Chiefs, Nursing Service. As we were unaware of this setup when arranging our site visits, we were unable to schedule sufficient time to interview the Chiefs of Staff or nursing officials at both divisions. Therefore, we chose to interview the clinical officials of the Wadsworth Division.

Because of its size and proximity to UCLA, the medical center offers an extended range of specialized services from open heart surgery to long-term psychiatric treatment.

The West Los Angeles medical center's location in the more affluent part of a city known for its physical size makes attracting employees in the lower graded positions difficult, since they must travel long distances to the West Los Angeles medical center, and the available public transportation is very inconvenient. Among the title 38 occupations, this affects the licensed vocational nurses most.

Conversely, the location of the medical center at the intersection of major highway arteries in the city may be a plus for those with automobiles. However, a rather long commute is typical as close by residential areas are astoundingly expensive, including such areas as Bel Air, Brentwood, and Beverly Hills.

VA MEDICAL CENTER, SAN FRANCISCO, CALIFORNIA

4150 Clement Street
San Francisco, CA 94121

Principal Medical Affiliate: The University of California at San Francisco

Number of Beds Operated: 360

Number of Outpatient Visits in FY 1990: 175,000

Number of Employees: 2,400

Number of Physicians: 155

Number of Registered Nurses: 280

Number of Licensed Vocational Nurses: 59

The VA Medical Center, San Francisco, is located in the western part of the city of San Francisco near Lands End overlooking the Golden Gate. The medical center has an acute care emphasis and is one of the few medical centers equipped for studies using both whole-body magnetic resonance imaging (MRI) and magnetic resonance spectroscopy (MRS). It is also one of six VA medical centers nationwide designated as an AIDS Clinical Center.

The medical center has a particularly active training program. They provide training to more than 1,500 individuals each year. Approximately 500 of these are resident physicians or medical students. The remaining number are primarily allied health trainees.

The medical center has the largest research program in the VA system. More than 100 principal investigators are supported by $8.5 million in funds from VA and an additional $16 million in funds from other sources.

The medical center is located away from the major public transit and highway commuter connections in the city. Thus, almost all employees must drive individually to the medical center. It has been necessary to build a parking ramp (to be paid for by parking fees) to accommodate the number of vehicles which are driven to the medical center.

The medical center has over half of its employees on special rates. This, combined with problems with funding levels, has created a budget crunch which has required the restriction of hiring. Thus, the staffing levels in nursing and in support services were a major concern to local officials whom we interviewed.

VA MEDICAL CENTER, MARTINEZ, CALIFORNIA

150 Muir Road
Martinez, CA 90822

Principal Medical Affiliate: The University of California at Davis

Number of Beds Operated: 314

Number of Outpatient Visits in FY 1990: 175,000

Number of Employees: 1,500

Number of Physicians: 116

Number of Registered Nurses: 201

Number of Licensed Vocational Nurses: 77

The VA Medical Center, Martinez, is located in the town of Martinez approximately 35 miles northeast of San Francisco on the Carquinez Straits, which connect San Francisco Bay with the Sacramento River Delta. The medical center is located approximately 70 miles from its principal medical affiliate, the University of California at Davis. The medical center is a general medical and surgical tertiary care facility with satellite outpatient clinics in Sacramento, Oakland, and Redding, CA; a drug dependence treatment clinic in Berkeley; and two day hospitals.

The medical center provides a wide variety of medical and surgical specialties. It has full diagnostic and treatment programs in neurology and neurosurgery and a comprehensive cancer center that includes a large hematology/oncology section, radiation therapy program, and a full-service women's program including mammography.

In addition to its residencies affiliated with the University of California at Davis, the medical center operates its own independent residency program in internal medicine.

The medical center must use special rates to compete with private sector health care institutions. Special rates requests are coordinated with the other VA medical centers in the San Francisco Bay area.

VA MEDICAL CENTER, NEW YORK CITY

408 First Avenue at East 24th Street
New York, NY 10010

Principal Medical Affiliate: New York University

Number of Beds Operated: 624

Number of Outpatient Visits per Year: 273,000

Number of Employees: 2,400

Number of Physicians: 200

Number of Registered Nurses: 370

Number of Licensed Practical Nurses: 70

The VA Medical Center, New York City, is located on the east side of Manhattan adjoining the Bellevue Hospital and the VA's principal affiliate, New York University (NYU). The medical center's location adjoining Bellevue Hospital attracts a great number of emergency cases in addition to the more conventional mix of patients. The medical center also operates a satellite outpatient clinic on Seventh Avenue. This facility is due to be replaced by an addition to the main medical center building which will enable the medical center to consolidate all of its outpatient services.

Recruitment of registered nurses is very difficult at the medical center because of the competition from city-owned and private hospitals in the vicinity. Special rates are a necessity, and have become so high that they have significantly compressed the pay schedules because new employees are paid at rates near the top of pay grades. The Chief of Staff told us that the center had to get an appointment arrangement for a Chief of Anesthesiology which essentially required NYU to supplement the doctor's VA salary by approximately $80,000 in order to recruit and retain this high-quality professional.

VA MEDICAL CENTER, BROOKLYN, NEW YORK

800 Poly Place
Brooklyn, NY 11209

Principal Medical Affiliate: State University of New York, Health Sciences Center at Brooklyn

Number of Beds Operated: 1,261

Number of Outpatient Visits per Year: 350,000

Number of Employees: 2,900

Number of Physicians: 199

Number of Registered Nurses: 534

Number of Licensed Practical Nurses: 117

The VA Medical Center, Brooklyn, NY, consists of a 786-bed main facility located next to the Verrazano Narrows Bridge, a 425-bed extended care center and 50-bed Homeless Domiciliary in St. Albans, Queens, and a satellite outpatient clinic located on Ryerson Street in North Brooklyn. The medical center provides a full array of medical services to veterans in Brooklyn, Queens, Staten Island, and Long Island. The medical center offers one rather unusual program—a domiciliary for the nongeriatric homeless. This program offers vocational rehabilitation to patients with the goal of returning the patient to an active independent working environment.

Most of those who work at the medical center live in Brooklyn, Staten Island, or on Long Island. We found that much of the work force does not commute to other boroughs of New York City. Competitors for clinical personnel are mainly other hospitals in Brooklyn. Special rates are in effect for registered nurses, licensed practical nurses, and a variety of health care positions.

VA MEDICAL CENTER, PERRY POINT, MARYLAND

Perry Point, MD 21902

Principal Medical Affiliate: University of Maryland

Number of Beds Operated: 900

Number of Outpatient Visits per Year: 61,500

Number of Employees: 1,200

Number of Physicians: 39

Number of Registered Nurses: 202

Number of Licensed Practical Nurses: 67

The VA Medical Center, Perry Point, is predominantly a long-term psychiatric facility. It is located at the confluence of the Chesapeake Bay and the Susquehanna River adjoining the town of Perryville, MD. The medical center is located approximately halfway between Baltimore, MD and Wilmington, DE, in one of the few remaining rural areas in the Boston-Washington corridor. The medical center's specialized programs include alcohol and substance abuse detoxification and treatment programs and a nursing home program. While predominantly psychiatric, the medical center includes an acute medical intensive care unit and a noninvasive cardiac lab.

Perry Point does not have an individual Dean's Committee, but shares its medical school affiliation with the VA Medical Center, Baltimore, which deals with the University of Maryland.

While in a rural area, the location of the medical center allows nurses and other health care professionals in the area to commute to Baltimore or Wilmington to work. Thus, the medical center must compete in these markets. Special rates are in place for registered nurses and licensed practical nurses.

VA MEDICAL CENTER, WASHINGTON, DC

50 Irving Street, NW.
Washington, DC 20422

Principal Medical Affiliate: The George Washington University, Georgetown University, and Howard University

Number of Beds Operated: 706

Number of Outpatient Visits per Year: 210,000

Number of Employees: 1,900

Number of Physicians: 153

Number of Registered Nurses: 364

Number of Licensed Practical Nurses: 84

The VA Medical Center, Washington, DC, is located next to the Washington Hospital Center and the Children's Hospital off North Capitol Street. It has the unusual arrangement of maintaining medical affiliations with three schools of medicine. One of its affiliates—Howard University—is nearby and the other two affiliates are 3 to 5 miles away. The medical center offers a full range of services to veterans in the Washington, DC, metropolitan area.

The number of available registered nurses and licensed practical nurses in this metropolitan area is limited as it is in other areas we visited. The Washington environment is unusual in that major competition for health professionals comes from within the Federal Government, including the Bethesda Naval Hospital, the Walter Reed Army Hospital, and the clinical centers of the National Institutes of Health. This competition is in addition to the competition from other private medical centers in the area. Special rates are in effect for registered nurses and licensed practical nurses.

U.S. Merit Systems Protection Board
1120 Vermont Avenue, NW
Washington, DC 20419

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

BULK RATE
U.S. POSTAGE PAID
WASHINGTON, DC
PERMIT NO. G-113